

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: DAVOL, INC. / C.R.
BARD, INC. POLYPROPYLENE
HERNIA MESH PRODUCTS
LIABILITY LITIGATION**

Case No. 2:18-md-2846

**JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

**This document relates to:
ALL ACTIONS**

**PLAINTIFFS' STEERING COMMITTEE'S MOTION FOR LEAVE TO FILE UNDER
SEAL ITS FORTHCOMING MOTION TO ENFORCE SUBPOENAS AND COMPEL
THE PRODUCTION OF DOCUMENTS**

Pursuant to Local Rule 5.2.1(a) and the Protective Order entered by the Court in this matter (ECF No. 48), the Plaintiffs' Steering Committee ("PSC") respectfully moves this Court to allow the PSC to file its forthcoming motion to enforce subpoenas served upon American Hernia Society, Inc. d/b/a Americas Hernia Society ("AHS") and the Americas Hernia Society Quality Collaborative Foundation ("AHSQCF") (collectively "Respondents") and to compel Respondents to produce the documents specifically outlined in the accompanying motion under seal, including the associated exhibits. For the reasons set forth below, this Court should grant the PSC's motion.

On September 3, 2019, the PSC served a subpoena duces tecum to Respondents. ECF No. 212. On October 11, 2019, Respondents served the PSC with objections to the requests for documents. The PSC and Respondents met and conferred to resolve disputes regarding the production of documents. All the issues could not be resolved. The issues are now ripe for the Court's consideration.

At the last status conference on November 14, 2019, the parties discussed the forthcoming non-party Motion to Enforce Subpoenas and Compel the Production of Documents to Respondents. After a short discussion on the substantive issues concerning the forthcoming

motion, the Court directed the PSC to submit its motion on the docket and indicated it would either set a briefing schedule or, alternatively, set a telephonic conference with all Counsel so the issues could be resolved without wasting too much time and resources. ECF No. 271, 42:23-43:2

Since this status conference during the PSC's work on this issue, it has become apparent to the PSC that it will need to use documents and deposition testimony that has been designated "Confidential" and "Highly Confidential" in support of its forthcoming motion to Enforce Subpoenas and Compel the Production to Documents to Respondents. The PSC is required to file documents that have been designated "Confidential" and "Highly Confidential" under seal pursuant to Article VIII., Paragraph 23 of the Protective Order. Furthermore, during the Meet and Confer process concerning the subpoenaed documents, Respondents notified the PSC that they are withholding certain documents to the extent the subpoena seeks information protected from public disclosure because they involve trade secrets, among other asserted protections and privileges. The PSC is unable to assess the validity of Respondents' objections and designations concerning their documents that would justify such assertions, which would potentially support a proper request to file under seal. Therefore, in an abundance of caution, the PSC seeks to file its forthcoming motion under seal to bring Respondents under the protections provided in the Protective Order.

Contemporaneous with this filing, the PSC will submit a copy of its Motion with exhibits *in camera*, and serve a copy on Defense Counsel. The PSC also requests that the Court direct the PSC on how it should provide a copy of the motion and exhibits – containing "Confidential" and "Highly Confidential" material – to Respondents so that Respondents can respond. The Court may then consider the best course of action having the benefit of the proposed motion and direct the Parties and Respondents accordingly. See, ECF No. 271, 42:23-43-2 (MAGISTRATE JUDGE JOLSON: "Right. So, Mr. O'Brien, go ahead and get your motion on the docket, and then I will

put on a briefing schedule. Or, alternatively, I might set a telephonic status conference with counsel so that we can maybe just resolve it without wasting too much time and resources.”).

For all the reasons described above, the PSC respectfully requests that the Court grant its *Motion for Leave to File Under Seal its Forthcoming Motion to Enforce Subpoenas and Compel the Production of Documents*, and to set a briefing schedule, or, alternatively, to set a telephonic conference with all Counsel to resolve the issues outlined in the forthcoming motion.

Dated: December 20, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019, I served the foregoing via the CM/ECF system and electronic mail on the following counsel:

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